

KAREN OSBORN)	
Claimant)	
VS.)	
)	Docket No. 1,032,359
O’CONNOR COMPANY, INC.)	
Respondent)	
AND)	
)	
CHUBB INDEMNITY INSURANCE COMPANY)	
Insurance Carrier)	

Claimant appeals the July 22, 2010, Preliminary Decision of Administrative Law Judge Marcia L. Yates Roberts (ALJ). Claimant was denied benefits after the ALJ determined that the bladder condition for which claimant is seeking treatment is not the result of the back injury suffered on October 24, 2006, nor is it the result of the pain medications claimant is forced to use as the result of the above discussed back injury.

This Appeals Board Member adopts the same stipulations as the ALJ, and has considered the same record as did the ALJ, consisting of the transcript of Preliminary Hearing held April 12, 2007, with attachments; the transcript of Preliminary Hearing held November 29, 2007, with attachments; the transcript of Preliminary Hearing held March 17, 2008, with attachments; the transcript of Preliminary Hearing held July 9, 2009, with attachments; the transcript of Preliminary Hearing held July 22, 2010, with attachments; and the documents filed of record in this matter.

Is claimant's bladder condition, which requires surgical treatment, a direct and natural consequence of claimant's work-related accident or the narcotic pain medication

claimant requires for her work-related accident and resulting injury, or is it, instead, the result of a longstanding, non-work-related bladder condition?

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the Preliminary Decision should be affirmed.

Claimant suffered an accidental injury to her low back on October 24, 2006. Authorized medical treatment, including the installation of a spinal cord stimulator, and narcotic pain medication have been provided. Claimant argues that she developed a bladder problem partially due to the accident and partially due to the medication she has been taking for her ongoing pain symptoms. Claimant contends that she started having leakage problems and other bladder incontinence after the October 24, 2006, accident. However, the record displays a long history of bladder problems, incontinence, infections, bladder pain, urinary frequency and surgeries.

During direct examination at the July 22, 2010, preliminary hearing, claimant acknowledged having bladder surgery, which she thought was in the 1990s,¹ but denied further trouble after that surgery until the accident on October 24, 2006. On cross-examination, when questioned about numerous incidences where claimant was treated for urinary tract infections, bladder incontinence, urgency of urination, urinary frequency and other bladder problems, claimant was unable to recall many of the past incidences or problems. Even after these many instances of past bladder problems were pointed out to claimant, she continued to deny any bladder problems between the October 2000 bladder surgery and the October 24, 2006, accident.

Board certified urologist John W. Weigel, M.D., from the Department of Urologic Surgery at the University of Kansas Medical Center (KUMC), opined that claimant's pain medication could be a factor in her voiding dysfunction, but did not state so in terms of medical certainty or probability. Board certified urologist Tomas L. Griebing, M.D., also of the KUMC Department of Urology, stated that, when asked by claimant, he was unable to determine if claimant's prior injury caused her stress urinary incontinence.

¹ At the preliminary hearing, claimant said that she thought the bladder surgery was in the 1990s. (See P.H. Trans. (July 22, 2010) at 10). But that surgery was actually in October 2000.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.²

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.³

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.⁴

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

. . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."⁵

The medical opinions in this record do not support a finding that claimant's need for medical treatment and her ongoing medications are the cause of her ongoing bladder problems. Claimant denied a long history of bladder problems, even when provided extensive medical documentation supporting same. This Board Member finds that claimant has failed to prove that her current need for bladder surgery stems from either the accident and resulting injury on October 24, 2006, or from the medications claimant is taking as the result of that accident. The Preliminary Decision of the ALJ,

² K.S.A. 2006 Supp. 44-501 and K.S.A. 2006 Supp. 44-508(g).

³ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ K.S.A. 2006 Supp. 44-501(a).

⁵ *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

denying claimant's request that the proposed bladder surgery be found to be compensable, is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

Claimant has failed in her burden of proving that her need for bladder surgery stems from her accident on October 24, 2006, or from the medications necessitated by that accident. The Preliminary Decision of the ALJ denying benefits is affirmed.

DECISION

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the Preliminary Decision of Administrative Law Judge Marcia L. Yates Roberts dated July 22, 2010, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October, 2010.

HONORABLE GARY M. KORTE

c: Mark E. Kolich, Attorney for Claimant
Jeff S. Bloskey, Attorney for Respondent and its Insurance Carrier
Marcia L. Yates Roberts, Administrative Law Judge

⁶ K.S.A. 44-534a.